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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,670	01/05/2006	Thomas Gore	I-2002.025 US	4798
31846	7590	03/21/2007		
INTERVET INC. PATENT DEPARTMENT PO BOX 318 MILLSBORO, DE 19966-0318			EXAMINER HURT, SHARON L	
			ART UNIT	PAPER NUMBER
			1648	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/21/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/539,670

Applicant(s)

GORE ET AL.

Examiner

Sharon Hurt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date Feb. 22, 2007.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

The amendments to the claims filed February 22, 2007 are acknowledged. Claims 1, 4-14 and 17-22 are currently amended.

### *Status of the Claims*

Claim 16 has been cancelled. Claims 1-15 and 17-27 are pending and under examination.

### *Response to Arguments*

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The rejection of claims 4, 8-13 and 17-22 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is **withdrawn** pursuant to Applicant's amendments.

The rejections of claim 6 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is **maintained**. Applicant's arguments filed February 22, 2007 have been fully considered but they are not persuasive. Applicant argues that a skilled artisan would recognize the differences between a vaccine based upon a "live" virus versus a vaccine based upon an "attenuated" virus. The Examiner was questioning the difference between "live" and "attenuated live" virus not between "live" and "attenuated" viruses. It is not clear if "live" could encompass

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pathogenic strains such as wild-type virus. The term "attenuated live" is not defined in the specification so that a person of ordinary skill in the art would be able to recognize the metes and bounds of the instant claimed invention.

***Claim Rejections - 35 USC § 102***

The rejection of claim 1 under 35 U.S.C. 102(e) as being anticipated by Audonnet et al. is **withdrawn** pursuant to Applicant's amendment.

The rejection of claim 14 under 35 U.S.C. 102(b) as being anticipated by either Warner et al. or Poulet et al. is **withdrawn** pursuant to Applicant's amendment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of claims 1-7, 14-16 and 23-27 under 35 U.S.C. 103(a) as being unpatentable over the combination of Poulet et al., Mochizuki et al., Miller et al., Schwartz et al. and Pratelli et al. is **maintained** for claims 1-7, 14-15 and 23-27 (claim 16 is cancelled).

Applicant's arguments filed February 22, 2007 have been fully considered but they are not persuasive. Applicant argues that none of the references teaches or suggests a multivalent vaccine comprising MCV or a multivalent vaccine comprising CPV, CRV and CHV antigens. Applicant also argues that none of the applied references teach or suggest protecting puppies by

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administering a multivalent vaccine comprising CPV, CRV and CHV antigens to a pregnant bitch prior to whelp. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant further argues that there is no suggestion or motivation to combine the references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Poulet et al. provides motivation to vaccinate against CHV because the rate of pregnancy was higher in vaccinated bitches and the mortality of pups was significantly reduced in the litters born to vaccinated bitches (Abstract). Motivation can be found in Miller et al. who teaches the vaccine composition and discloses that it may contain other antigens such as canine parvovirus and canine rotavirus (column 7, lines 49-55).

Applicant also argues that Mochizuki et al. and Schwartz et al. merely describe epidemiological or genetic studies and make no references to vaccines. Mochizuki et al. teaches the importance of CRV, which provides motivation to include CRV in a multivalent vaccine. Schwartz et al. teaches about MCV and that it has properties of parvovirus closely related to CPV-1 but is distinct from CPV-2. These prior art references teach about the canine viruses

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while Miller et al teaches the vaccine composition. Pratelli et al. teaches about vaccinating pups while Poulet et al. teaches about vaccination of pregnant bitches. These references in combination teach the limitations of the instant claimed invention.

As set forth *In re Kerkoven*, 205 USPQ 1069 (CCPA 1980), It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose...the idea of combining them flows logically from their having been individually taught in prior art.

The rejection of claims 8-13 and 17-22 under 35 U.S.C. 103(a) as being unpatentable over the combination of Poulet et al., Mochizuki et al., Schwartz et al. and Pratelli et al. as applied to claims 1-7, 14-16 and 23-27 above, and further in view of Willem et al. **is maintained.**

Applicant's arguments have been fully considered but they are not persuasive. Applicant again argues that none of the applied publications teach or suggest all of the limitations as recited by Applicant's claims. Applicant also argues again that there is no suggestion or motivation to the skilled artisan to combine the publications. These arguments have been addressed supra. Applicant further argues that Willem et al. does not cure the deficient teachings of Poulet et al., Mochizuki et al., Schwartz et al. and Pratelli et al. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Poulet et al. teaches a method of vaccinating bitches against CHV. Pratelli et al. teaches a method of vaccinating bitches and pups against CPV-2 and showed the efficacy of the vaccine with antibody titers in the pups. Willem et al. teaches a method of testing the efficacy of an attenuated CPV vaccine in pups. Mochizuki et al. teaches about the importance of CRV and Schwartz et al. teaches about MVC. Vaccinating dogs with a multivalent vaccine is well known in the art especially with canine distemper virus vaccines. It would be obvious to a skilled artisan to use a multivalent vaccine for viral pathogens common to canines because it is more efficient and cost effective than multiple monovalent vaccine inoculations.

As set forth *In re Kerkoven*, 205 USPQ 1069 (CCPA 1980), It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose...the idea of combining them flows logically from their having been individually taught in prior art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bass et al. (US Patent 5,000,951) discloses multivalent canine distemper virus vaccine (CDV), which simultaneously provides immunization for CDV and other common canine viral infections (column 1, lines 60-65).

Pratelli et al. (Journal of Veterinary Diagnostic Investigation, 1999, Vol. 11, pages 365-367) teaches about canine parvovirus type 1 (CPV-1) also known as minute virus of canines (MCV), and the pathogenicity to dogs, pregnant bitches and pups (page 365).

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Truyen (International Veterinary Information Service, Jan. 2000, 6 pages) teaches about parvoviruses, CPV, CPV-2 and CPV-2b, and minute viruses of canines (MCV, CPV-1) and multivalent vaccines containing CPV, CDV and CAV (page 1 and 5).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Hurt whose telephone number is 571-272-3334. The examiner can normally be reached on M-F 8:00 - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Hurt

March 15, 2007

  
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